

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 08-1098

MICHAEL D. WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** MAY 13, 2009

APPEAL FROM THE CHICOT  
COUNTY CIRCUIT COURT,  
FIRST DIVISION, [NO. CR2007-10-1]

HONORABLE SAM POPE,  
JUDGE

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant Michael Williams was convicted in a jury trial of kidnapping, aggravated robbery, and theft of property. He was sentenced to two consecutive ten-year prison terms, to be served concurrently with a three-year sentence for the theft conviction, for a total of twenty years in the Arkansas Department of Correction. On appeal, Mr. Williams argues that the trial court erred in denying his motions for directed verdicts on each of the three charges. We affirm.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). We affirm a conviction if substantial evidence exists to support it. *Id.*

Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction, but only if it excludes every reasonable hypothesis consistent with innocence. *Simons v. State*, 89 Ark. App. 34, 199 S.W.3d 711 (2004).

The victims in this case were Roger Mixon, Sr., and Flora Mae Mixon. The victims' son, Roger Mixon, Jr., lives in a house next door to them and testified about the events that occurred at around noon on November 18, 2006. Roger Mixon, Jr., testified that he came out of his house with his stepdaughter to rake leaves when he saw his mother coming across the yard. She was covered in blood, with her head split open and eye swollen shut. Roger Mixon, Jr., told his stepdaughter to dial 911 and he went to his parents' house to check on his father, who was lying on the floor, barely conscious and bleeding, with his head gashed open. Roger Mixon, Jr., wrapped towels around his parents' wounds and drove them to the hospital.

While the victims were being taken to the hospital, the police were sent to the crime scene to investigate. According to the investigating officers, there was a lot of blood and items were strewn around in the Mixons' home. Among other items, the police recovered a roll of duct tape. The duct tape was tested for fingerprints at the crime lab, and Mr. Williams' thumb prints were found on the roll of tape.

Roger Mixon, Sr., testified that on the day of the attacks a man came to their house claiming that he had run out of gas. Mr. Mixon stated that he was hit over the head with a wrench, and did not remember anything after that.

Flora Mae Mixon testified that she let the man inside the house so he could call his mother to bring him gas. After several failed attempts to get his mother to answer her phone, the man threw Mr. Mixon across the room, and then slung Ms. Mixon on top of him. After that, he hit Mr. Mixon with a wrench. Then the man struck Ms. Mixon in the head.

According to Ms. Mixon, the assailant took her, sat her on the foot of her bed, and tied her hands with a phone cord and duct taped them. Then he took another cord from the wall and tied her feet and taped them. Ms. Mixon testified that the man had already taken two .357 revolvers from under the couch. Ms. Mixon stated that the man got the keys from her husband and stole their car from the yard.

Ms. Mixon testified that she was able to break her hands free using her mouth. Then she got her feet loose and went out the back door, fearing that if she exited from the front door the man would see her. Ms. Mixon ran through the yard, where she was met by her son.

Mr. Williams testified on his own behalf, and denied any criminal activity. He maintained that he had never been to the Mixons' house.

In this appeal, Mr. Williams first challenges the sufficiency of the evidence to support his kidnapping conviction. Mr. Williams was charged with kidnapping under Ark. Code Ann. § 5-11-102(a)(3) and (4) (Repl. 2006), which provides:

(a) A person commits the offense of kidnapping if, without consent, the person restrains another person so as to interfere substantially with the other person's liberty with the purpose of:

. . . .

- (3) Facilitating the commission of any felony or flight after the felony;
- (4) Inflicting physical injury upon the other person[.]

Mr. Williams does not challenge the fact that he restrained Ms. Mixon for purposes of the statute. However, he argues that there was a lack of proof that the restraint was without consent, noting that Ms. Mixon never testified that the restraint was involuntary. Moreover, Mr. Williams argues that the State failed to provide sufficient evidence that he restrained Ms. Mixon with the purpose of inflicting physical injury, or with the purpose of aiding in the commission of a felony or subsequent flight. Concerning the commission of a felony or his escape, Mr. Williams submits that the fact that Mr. Mixon was left unrestrained rendered useless any aid that Ms. Mixon's restraint would have provided.

Pursuant to Rule 33.1(a) and (c) of the Arkansas Rules of Criminal Procedure, in order to preserve a sufficiency challenge in a jury trial, the defendant must make specific motions for directed verdict at the close of the State's case and at the close of all the evidence. Because Mr. Williams made the specific arguments now being raised regarding his kidnapping conviction to the trial court in his directed verdict motions, his challenge to the sufficiency of the evidence to support that offense is preserved.

We hold that substantial evidence supports appellant's conviction for kidnapping. Although Ms. Mixon did not specifically testify that her restraint was without consent, her testimony nonetheless established this element of the offense. Restraint without consent is

defined as including restraint by physical force. *Davis v. State*, 368 Ark. 351, 246 S.W.3d 433 (2007). Ms. Mixon stated that the assailant threw her and her husband across the room; struck her husband in the head with a wrench and then struck her in the head; and that he took her to her bed and bound her hands and feet with cord and tape. Ms. Mixon testified that she was able to free herself only because her dripping blood caused the duct tape to loosen enough that she could tear it with her teeth. From these circumstances, it is clear that Ms. Mixon's restraint was without her consent.

Moreover, there was substantial evidence that Mr. Williams' purpose in restraining Ms. Mixon was to facilitate his flight after the felonies. A criminal defendant's intent or state of mind is rarely capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Chase v. State*, 334 Ark. 274, 973 S.W.2d 791 (1998). In this case, the evidence showed that Mr. Williams knocked Mr. Mixon nearly unconscious so further restraint of him was unnecessary. After restraining Ms. Mixon, appellant successfully fled the crime scene. This evidence sufficiently supported the jury's conclusion that Mr. Williams' purpose was to facilitate his flight.

Mr. Williams next challenges the sufficiency of the evidence to support his aggravated robbery conviction. A person commits aggravated robbery if he commits robbery and inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-12-103(a)(3) (Repl. 2006). A person commits robbery if, with the purpose of committing a theft, the person employs or threatens to employ physical force upon another person. Ark. Code Ann. § 5-12-102(a) (Repl. 2006). A person commits theft of property

if he knowingly takes or exercises unlawful control over the property of another person, with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1) (Repl. 2006). In the present case, Mr. Williams argues that the State's proof was insufficient because it failed to prove the element of the offense that he had the intent to commit a theft. Mr. Williams submits that there was no testimony at trial that established that he took or exercised unauthorized control over the Mixons' property, or that he had the intent to do so.

Mr. Williams' argument challenging his aggravated robbery conviction is not preserved for review. The only specific argument he raised below in his directed verdict motions was that there was a lack of evidence that he inflicted or attempted to inflict death or serious physical injury, and he now argues that there was insufficient evidence of his intent to commit a theft. Because appellant changes his argument on appeal and failed to make this specific argument in his motions for directed verdict, the argument has been waived. *See* Ark. R. Crim. P. 33.1.

Even had Mr. Williams preserved the sufficiency argument now being raised with regard to his aggravated robbery conviction, it clearly lacks merit. The State provided through Ms. Mixon's testimony that, after inflicting serious injuries to both victims, Mr. Williams took possession of two firearms from the Mixons' residence and fled with the stolen items.

Finally, Mr. Williams challenges the sufficiency of the evidence to support his conviction for theft of property. Under Ark. Code Ann. § 5-36-103(b)(2)(c) (Repl. 2006),

appellant's theft conviction constituted a Class C felony because the property was a firearm valued at less than \$2500. The only argument now being raised is that the State failed to sufficiently provide evidence regarding the value of the handguns taken from the Mixons' home, which appellant claims is a required element for Class C felony theft. In making his directed verdict motion below, appellant argued that there was no evidence as to the value of the firearms, and while it appears that his argument was probably directed toward the State proving some minimum value, we deem his directed verdict motion to be of enough specificity to preserve this point on appeal.

Nonetheless, Mr. Williams' challenge to his Class C felony theft conviction fails. Theft of a firearm is a Class C felony if the weapon is valued at less than \$2500; thus, the offense is at least a Class C felony, regardless of the weapon's value, and the State is not required to establish the value of the weapon in order to obtain a conviction. *See Gregory v. State*, 9 Ark. App. 242, 657 S.W.2d 570 (1983). As the State points out in its brief, Mr. Williams would have been subjected to a Class B felony had the State proved that the value of the stolen property exceeded \$2500. *See Ark. Code Ann. § 5-36-103(b)(1)(A)* (Repl. 2006). But because the State established that appellant took two firearms from the Mixons' residence, and because the State need not establish a minimum value of the firearms to support Class C felony theft of a firearm, that conviction is affirmed.

Affirmed.

PITTMAN and GRUBER, JJ., agree.